

Court of Appeals, State of Michigan

ORDER

James Barnovsky v State Farm Mutual Automobile Ins Co

Docket No. 275284

LC No. 06-611535-NF

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

The Court orders that the motion for peremptory reversal pursuant to MCR 7.221(C)(4) is GRANTED because the trial court erred in denying defendant's motion for partial summary disposition. Although plaintiff previously filed an action for first-party no fault benefits against defendant on June 7, 2005, plaintiff stipulated to dismiss the action without prejudice. Plaintiff commenced the current action for first-party no fault benefits on April 20, 2006, when he filed a complaint against defendant. MCR 2.101(B). Under MCL 500.3145(1), plaintiff may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced. Thus, plaintiff may not recover any benefits incurred before April 20, 2005. See *Cameron v Auto Club Ins Assn*, 476 Mich 55, 61; 718 NW2d 784 (2006); *Devillers v Auto Club Ins Co*, 473 Mich 562, 574; 702 NW2d 539 (2005). Contrary to his argument below and on appeal, plaintiff's current action is not simply a continuation of the first action. Moreover, contrary to the trial court's ruling, the fact that plaintiff's first lawsuit gave defendant "notice" is irrelevant for purposes of applying MCL 500.3145(1).

The application for leave to appeal is DENIED as moot.

The matter is REMANDED to the trial court for further proceedings not inconsistent with this order. The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 04 2007
Date

Sandra Schultz Mengel
Chief Clerk